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8 Attorneys for Defendants  
GIGANEWS, INC., and  
9 LIVEWIRE SERVICES, INC.

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

13 PERFECT 10, INC., a California  
14 corporation,

15 Plaintiff,

16 v.

17 GIGANEWS, INC., a Texas Corporation;  
18 LIVEWIRE SERVICES, INC., a Nevada  
19 corporation; and DOES 1 through 100,  
inclusive,

20 Defendants.

21 GIGANEWS, INC., a Texas Corporation;  
22 LIVEWIRE SERVICES, INC., a Nevada  
23 Corporation,

24 Counterclaimants,

25 v.

26 PERFECT 10, INC., a California  
27 Corporation,

28 Counterdefendant.

Case No.: 11-cv-07098-ABC (SHx)

**DISCOVERY MATTER**  
*Before Hon. Stephen J. Hillman*

**ORDER GRANTING  
DEFENDANTS GIGANEWS, INC.  
AND LIVEWIRE SERVICES,  
INC.'S MOTION TO COMPEL  
DISCOVERY COMPLIANCE  
FROM THIRD-PARTY  
WITNESSES**

Discovery Cut-off: June 30, 2014  
Pretrial Conference: January 19, 2015  
Trial Date: January 27, 2015

ORDER GRANTING DEFS.' MTN. TO COMPEL  
DISCOVERY COMPLIANCE FROM THIRD-  
PARTY WITNESSES

CASE NO. 11-cv-07098-ABC (SHx)

1 WHEREAS, on March 31, Defendants served Third-Party Witnesses  
2 Gwendalyn Augustine, Jennifer McCall, and Sean Chumura with subpoenas to  
3 produce documents and information, commanding the production of all documents  
4 by April 15, 2014;

5 WHEREAS, on April 1, 2014, Defendants served Third-Party Witnesses  
6 Melanie Poblete, Szabolcs Apai, and Eileen Koch with subpoenas to produce  
7 documents and information, commanding the production of all requested  
8 documents by April 15, 2014;

9 WHEREAS, on April 14, 2014, counsel for Plaintiff Perfect 10, Inc.  
10 ("Plaintiff" or "Perfect 10") served objections and responses to the document  
11 subpoenas on behalf of Plaintiff and Ms. Poblete, Mr. Apai, Ms. Koch, Ms.  
12 Augustine, Ms. McCall, and Mr. Chumura (collectively, the "Subpoenaed  
13 Witnesses");

14 WHEREAS, none of the Subpoenaed Witnesses produced any of the  
15 requested documents to Defendants by the due date of April 15, 2014;

16 WHEREAS, on April 17, 2014, Defendants deposed Mr. Chumura who,  
17 admitted that he has had documents in his possession that are responsive to  
18 Defendants subpoena, but that he had not yet found them. Although a number of  
19 Defendants' document requests to Mr. Chumura concerned his financial dealing  
20 with Perfect 10 and Norman Zada, Mr. Chumura admitted not searching for the  
21 requested documents. Mr. Chumura said that his search for responsive documents  
22 is ongoing;

23 WHEREAS, on April 18, 2014, Defendants sent a letter to counsel for  
24 Plaintiff and the Subpoenaed Witnesses that identified each issue and/or discovery  
25 request in dispute regarding the Subpoenaed Witnesses, as required by L.R. 37-1,  
26 further requesting a meet-and-confer by telephone to discuss the discovery disputes;

1 WHEREAS, on April 23, 2014, Defendants deposed Ms. Poblete who  
2 admitted that she did not perform any “fresh search” for documents in response to  
3 the Defendants’ subpoena and that she is not aware of anyone else performing a  
4 search for documents in response to the subpoena;

5 WHEREAS, on April 25, 2014, Defendants deposed Mr. Apai, who admitted  
6 that he had not searched all of his email accounts for responsive documents. Mr.  
7 Apai also testified that he deleted all of his emails in his Hotmail email account a  
8 few months ago, in January or February 2014, and did not do anything to try to  
9 retrieve them. Mr. Apai further admitted that he did not search his Hotmail email  
10 account or his G-mail email account or for “Giganews” or “Livewire” as  
11 Defendants’ subpoena requested. Finally, Mr. Apai testified that he was willing to  
12 do further searches of his email accounts in response to the subpoena;

13 WHEREAS, on or about April 24, 2014 and May 7, 2014, Defendants  
14 received some documents from Ms. Augustine and Ms. McCall, respectively;

15 WHEREAS, on April 28, 2014, counsel for Defendants, Plaintiff, and the  
16 Subpoenaed Witnesses conducted a meet-and-confer conference by telephone  
17 regarding the April 18, 2014 letter. Defendants, Plaintiff, and the Subpoenaed  
18 Witnesses reached a number of agreements concerning the Subpoenaed Witnesses’  
19 compliance efforts, including among other things, that: (1) they would search for  
20 responsive documents using reasonable search terms; (2) they would provide details  
21 of the searches performed; and (3) they would reconsider their objections in light of  
22 the Court’s other discovery orders on the same topics;

23 WHEREAS, following the conference, the Subpoenaed Witnesses did not  
24 fully comply with these agreements;

25 WHEREAS, on May 12, 2014, Defendants sent the Subpoenaed Witnesses  
26 and Perfect 10 a stipulation and proposed order to address the Subpoenaed  
27 Witnesses’ discovery noncompliance, to which they did not agree.

1 WHEREAS, Defendants have sufficiently established the right to compel  
2 further discovery responses and documents from the Subpoenaed Witnesses;

3 NOW, THEREFORE, having considered the Joint Stipulation on Defendants  
4 Giganews, Inc. and Livewire Services, Inc.'s Motion to Compel Discovery  
5 Compliance from Third-Party Witnesses, as well as Defendant's Supplemental  
6 Memorandum, and good cause appearing therefor, the Court hereby GRANTS  
7 Defendants' motion as follows:

8 In no case later than the close of fact discovery, the Court hereby ORDERS  
9 that:

- 10 1. Each of the Subpoenaed Witnesses will provide supplemental responses and  
11 detailed declarations under oath (by each Subpoenaed Witness and its  
12 counsel) regarding their search efforts for each request in the Subpoenas on a  
13 request-by-request basis, including identifying all computers, electronic  
14 media, and paper files they searched, all computers, electronic media, and  
15 paper files they maintain but did not search, the date range of the documents  
16 they searched, all search terms employed for electronic searching, and all  
17 other search methods employed;
- 18 2. Each of the Subpoenaed Witnesses will: (a) produce to the Defendants all  
19 responsive non-privileged documents in their possession, custody, or control  
20 that were located after a reasonable and diligent search as provided herein;  
21 and (b) Plaintiff shall serve a privilege log identifying any responsive  
22 documents that the Subpoenaed Witnesses withheld from production based  
23 on privilege or any other reason;
- 24 3. Specifically regarding **Requests Nos. 1-3**,<sup>1</sup> in addition to manually locating  
25 and producing all responsive documents that the Subpoenaed Witnesses are

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26 <sup>1</sup> Exhibit A to each of the document subpoenas that Defendants served on each of  
27 Subpoenaed Witnesses, except Sean Chumura, contains numbered document  
28 requests that are identical or substantially similar. Mr. Chumura's Requests Nos. 1-  
6 are the same as in the other subpoenas. And while his Requests Nos. 7-11 and 13  
contain the same document requests relating to his work for Perfect 10, Mr. Zada,  
and any other related businesses, which correspond to Request Nos. 5-12 to the  
other Subpoenaed Witnesses, the numbering sequence is somewhat different. Also,  
Defendants' subpoena to Mr. Chumura contained a request for all invoices he  
issued to Perfect 10 or Mr. Zada (Request No. 12), which was not in the other

ORDER GRANTING DEFS.' MTN. TO COMPEL 3 CASE NO. 11-cv-07098-ABC (SHx)  
DISCOVERY COMPLIANCE FROM THIRD-  
PARTY WITNESSES

1 aware of based on their own knowledge, diligence, and reasonable efforts,  
2 the Subpoenaed Witnesses will search all electronic documents in their  
3 possession, custody or control, including all email accounts, using the  
4 relevant search terms expressly referenced in Perfect 10's own complaint, as  
listed in Appendix A;

5 4. Specifically, regarding **Request No. 4**, in addition to manually locating and  
6 producing all responsive documents that the Subpoenaed Witnesses are  
7 aware of based on their own knowledge, diligence, and reasonable efforts,  
8 the Subpoenaed Witnesses will search all electronic documents in their  
9 possession, custody or control, including all email accounts, using first each  
of the names from the request, and then further culling the responsive  
documents using the further agreed search terms listed in Appendix B;

10 5. Specifically, regarding **Requests No. 5-12**, in addition to manually locating  
11 and producing all responsive documents that the Subpoenaed Witnesses are  
12 aware of based on their own knowledge, diligence, and reasonable efforts,  
13 the Subpoenaed Witnesses will search all electronic documents in their  
14 possession, custody or control, including all email accounts, using first the  
terms "Perfect 10", "Perfect10", "P10", "Zada", "Zadeh", and "Norm", and  
then the further agreed search terms listed in Appendix C;

15 6. Specifically, regarding **Requests No. 13-15**, the Subpoenaed Witnesses will  
16 provide verified lists of the requested information in lieu of producing  
17 documents sufficient to identify: (a) all email addresses used by the  
18 Subpoenaed Witnesses for any business purpose (including personal email  
19 addresses you used for any business purpose) since they first worked for  
20 Perfect 10 or Norman Zada; (b) all IP addresses the Subpoenaed Witnesses  
21 have used for any business purpose since they first worked for Perfect 10 or  
Norman Zada; and (c) all names the Subpoenaed Witnesses have used,  
personally or professionally;

22 7. Specifically, regarding **Requests No. 16-17**, in addition to manually locating  
23 and producing all responsive documents that the Subpoenaed Witnesses are  
24 aware of based on their own knowledge, diligence, and reasonable efforts,

25 subpoenas, but the other related requests would cover the same ground. Mr.  
26 Chumura's Requests Nos. 14-16 correspond to Requests Nos. 13-15 in the other  
27 subpoenas; his Requests Nos. 18-19 are sufficiently similar to Requests Nos. 16 and  
28 17. Accordingly, Mr. Chumura must comply with all orders herein as if the  
numbering differences did not exist.

1 the Subpoenaed Witnesses will search all electronic documents in their  
2 possession, custody or control, including all email accounts, using first the  
3 terms "Perfect 10", "Perfect10", "P10", "Zada", "Zadeh", and "Norm", and  
4 then the further agreed search terms listed in Appendix D;

- 5 8. Specifically, regarding **Request No. 17 to Mr. Chumura**, Perfect 10 and/or  
6 Mr. Chumura will produce all requested documents or items;  
7 9. Sanctions Requests are deferred until there is full compliance with this Order.

8 **IT IS SO ORDERED.**

9 Dated: June 5, 2014



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STEPHEN J. HILLMAN  
United States Magistrate Judge

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SAN FRANCISCO

**APPENDIX A**

**Further Search Terms for Requests Nos. 1-3**

Giganews  
Giga  
GN  
Yokubaitis  
Livewire  
LW  
Powerusenet  
Powerusenet.com  
Power Usenet  
Rhinonewsgroups  
Rhinonewsgroups.com  
Rhino Newsgroups  
Infinityusenet  
Infinityusenet.com  
Infinity Usenet  
Eurousenet  
Eurousenet.com  
Euro Usenet  
Galacticgroups  
Galacticgroups.com  
Galactic Groups  
Cheapnewsgroups  
Cheapnewsgroups.com  
Cheap Newsgroups  
Fastusenet  
Fastusenet.com  
Fast Usenet  
Usenetgiant  
Usenetgiant.com  
Usenet Giant  
Usenet.net

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